

**PT 03-27**

**Tax Type: Property Tax**

**Issue: Charitable Ownership/Use**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**PETER CLAVER CENTER,  
APPLICANT**

**v.**

**ILLINOIS DEPARTMENT  
OF REVENUE**

**Nos. 01-PT-0084  
(01-99-214)  
P.I.N: 07-15-107-042**

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**RECOMMENDATION FOR DISPOSITION**

**APPEARANCES:** Mr. Daniel J. Adler, attorney at law, on behalf of the Peter Claver Center (the “applicant”); Mr. Michael Abramovic, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue (the “Department”).

**SYNOPSIS:** This proceeding raises the limited issue of whether real estate identified by Will County Parcel Index Number 07-15-107-042 (the “subject property”) was “actually and exclusively used for charitable or beneficent purposes,” as required by 35 ILCS 200/15-65, during the 2001 assessment year. The underlying controversy arises as follows:

Applicant filed an Application for Property Tax Exemption with the Will County Board of Review (the “Board”) on July 12, 2001. The Board reviewed this Application recommended to the Department that the requested exemption be granted. On October 14, 2001, the Department issued its determination in this matter, finding that the subject property is not in exempt use.

Applicant filed a timely appeal to this denial and later presented evidence at a formal hearing, at which the Department also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be reversed.

**FINDINGS OF FACT:**

1. The Department's jurisdiction over this matter and its position herein are established by the admission of Dept. Group Ex. No. 1, Documents A, C.
2. The Department's position in this matter is that the subject property is not in exempt use. Dept. Group Ex. No. 1, Document A.
3. Applicant, an Illinois not-for-profit corporation organized for purposes of providing social services to the economically disadvantaged, obtained ownership of the subject property on January 25, 1993. Dept. Group Ex. No. 1, Document C; Applicant Ex. Nos. 4, 7.
4. Applicant's social service programs include tutoring, CPR certification, job training, furniture and appliance distribution, substance abuse counseling, computer literacy, food and clothing distribution, G.E.D. preparation and recreational activities for youth. Applicant Ex. Nos. 18, 20, 21, 22, 23, 25, 26, 27, 38, 39, 40.
5. Applicant's main facility, at which it offers most of social service programming, was exempted from real estate taxation under the terms of Departmental determinations in Docket Nos. 88-99-119, 89-99-67 and 91-99-51. Dept. Group Ex. No. 1, Doc. B; Administrative Notice; Applicant Ex. No. 37; Tr. p. 47.
6. The subject property, which is improved with two separate one-story buildings, is located due north of applicant's main facility. Tr. p. 27.

7. Neither of the buildings could be used as venues for any of applicant's programs throughout 2001<sup>1</sup> because they had become highly dilapidated after many years of being occupied by vagrant drug dealers. Tr. pp. 29-31, 35.
8. Applicant was, however, able to use both of the buildings for storage of donated items that it used mostly in connection with its various distributional programs for the needy. Tr. pp. 35-36.
9. The items that applicant stored in the buildings included refrigerators, clothes, shoes, cot rollways, non-perishable canned food items, dishes, pots, pans, chairs, dishes and other household items that applicant gave away as part of a program that assisted families that had sustained losses through house fires, floods or other catastrophic occurrences. Applicant Ex. Nos. 27, 42; Tr. pp. 35-38, 60-62.
10. Applicant also used these buildings to store toys, food and other donated items that it distributed as part of give away programs that it held for the needy at the Easter, Thanksgiving and Christmas holidays. Applicant Ex. Nos. 30, 31, 32, 33 34, 35; Tr. pp. 62-64, 66.
11. Applicant also used one of the buildings to store computers that were used to teach computer repair skills in one in of its computer literacy programs. Applicant Ex. No. 42; Tr. pp. 37-38.

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1. The uses described in this and all subsequent findings of fact shall be understood to be uses taking place in 2001 unless context clearly specifies otherwise.

## **CONCLUSIONS OF LAW:**

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional authority, the General Assembly enacted Section 15-65(a) of the Property Tax Code, 35 ILCS 200/1-1 *et seq*, wherein the following are exempted from real estate taxation:

### **200/15-65. Charitable Purposes**

§ 15-65. All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit:

- (a) institutions of public charity.

35 ILCS 200/15-65(a).

The word “exclusively” when used in Section 15-65(a) and other property tax exemption statutes means the “the primary purpose for which property is used and not any secondary or incidental purpose.” Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App.3d 186 (4th Dist. 1993). “Charitable” uses are those that, by definition, benefit an indefinite number of people in a manner that persuades them to an educational or religious conviction that benefits their general welfare or otherwise reduce the burdens of government. Crerar v. Williams, 145 Ill. 625 (1893). They are also uses undertaken by entities that: (1) have no capital stock or shareholders; (2) earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes

expressed in their charters; (3) dispense charity to all who need and apply for it; (4) do not provide gain or profit in a private sense to any person connected with them; and, (5) do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits they dispense. Methodist Old People's Home v. Korzen, 39 Ill.2d 149, 156, 157 (1968).

There is presently no dispute that applicant owned the subject property throughout the tax year in question. Nor is there any dispute that applicant qualifies as an “institution of public charity” within the meaning of 35 ILCS 200/15-65(a). Therefore, the sole source of controversy herein is, as defined by the adversarial parties to this proceeding, whether the subject property was “actually and exclusively used for charitable or beneficent purposes” during the tax year currently in question, 2001.

It is well established that exempt use may be found where applicant uses the subject property in a manner that is reasonably necessary to facilitate another specifically identifiable exempt use. Memorial Child Care v. Department of Revenue, 238 Ill. App. 3d 985, 987 (4<sup>th</sup> Dist. 1992) (day care center that limited its enrollment strictly to children of employees who worked at a charitable hospital and its affiliated corporations held exempt). *See also*, Evangelical Hospital Ass’n. v. Novak, 125 Ill. App.3d 439 (2<sup>nd</sup> Dist. 1984) (property used for no purpose other than to provide centralized administrative services to five charitable hospitals held exempt); Evangelical Hospitals Corp. v. Illinois Department Of Revenue, 223 Ill. App.3d 225, 231 (2<sup>nd</sup> Dist. 1992) (part of office building actually used to provide administrative services for charitable hospitals held exempt).

In this case, the Department does not dispute that applicant used the materials stored at the two buildings situated on the subject property to further the “charitable” activities taking place at its nearby main facility. It does, however, question whether these buildings were in exempt use because applicant’s actual use of these buildings was sporadic or episodic, at best, throughout the tax year in question.

The Department is technically correct that applicant must demonstrate that it actually and actively used the subject property for some specifically identifiable “charitable” purpose in order to sustain its burden of proof. Skil Corporation v. Korzen, 32 Ill.2d 249 (1965); Comprehensive Training and Development Corporation v. County of Jackson, 261 Ill. App.3d 37 (5th Dist. 1994). Thus, property that is primarily vacant, and not actively used for any purpose whatsoever, does not qualify for exemption. Antioch Missionary Baptist Church v. Rosewell, 119 Ill. App.3d 981 (1st Dist. 1983) (church property that was intended for religious use but was boarded up and completely vacant throughout the tax year in question held non-exempt).

The particular use at issue in this case, storage, is one that is not susceptible to regular, ongoing, active use. Rather, it is one that, by its very nature, lends itself to intermittent uses that vary with the needs of the particular entity. Therefore, contrary to the Department’s position, applicant need not prove that it actively and continuously used the subject property to the same extent, and in the same manner, as it actively used its main facility in order to satisfy the “reasonably necessary” standard that applies to storage property. Rather, applicant need only prove: (1) that it used the two buildings situated on the subject property “exclusively” or primarily for storage purposes throughout the tax year in question; and, (2) that it stored its own property, or materials

that it used in connection with its own programs, in these two buildings; and, (3) that the property or materials that it stored in these two buildings actually helped to fulfil one or more of its legitimate “charitable” purposes.

There is presently no dispute that, throughout 2001, applicant used the two buildings in question for no purpose other than for storage of goods and other materials that it distributed as part of its various programs that assist the economically disadvantaged. This being the only use of these buildings during that tax year, it must be concluded that applicant’s use thereof was “reasonably necessary” to facilitate such programs. Therefore, the Department’s initial determination in this matter, finding the subject property was not “exclusively used for charitable or beneficent purposes” during the 2001 tax year, as required by 35 ILCS 200/15-65, should be reversed.

**WHEREFORE**, for all the aforementioned reasons, it is my recommendation that real estate identified by Will County Parcel Index Number 07-15-107-042 be exempt from 2001 real estate taxes under 35 ILCS 200/15-65.

Date: 10/14/2003

Alan I. Marcus  
Administrative Law Judge